

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TERESA L. ROCKWELL,
Plaintiff,

v.

CIVIL ACTION NO. 3:08CV169
(Chief Judge Bailey)

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,
Defendant.

REPORT AND RECOMMENDATION/OPINION

On November 17, 2008, Teresa L. Rockwell, the plaintiff, *pro se*, filed a Complaint in this matter [Docket Entry 1] along with a Motion to Proceed in Forma Pauperis [Docket Entry 3]. On November 18, 2008, the Court granted Plaintiff's Motion to Proceed in Forma Pauperis [Docket Entry 5] and issued a summons as to the Commissioner of Social Security [Docket Entry 6]. On January 23, 2009, the Defendant Commissioner of Social Security moved for an extension of time to file his Answer, which Motion was granted on January 26, 2009 [Docket Entries 8 and 9]. On March 23, 2009, Defendant Commissioner of Social Security filed his Answer to the Complaint, along with a copy of the Transcript of the Administrative Proceedings in this matter [Docket Entries 10, 11, and 12]. A review of the docket on or about June 17, 2009, revealed Plaintiff had not filed her Motion for Summary Judgment and Brief in Support.

On June 17, 2009, the Court entered an Order directing Plaintiff to Local Rule of General Procedure 86.02(c) (formerly 83.12(b)), which provides:

Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief. The plaintiff shall serve copies of his or her brief upon the United States Attorney's Office.

The Court advised Plaintiff that her brief in support of her claims had therefore been due on or before April 23, 2009. Because Plaintiff was appearing *pro se*, however, instead of ordering her to show cause why the case should not be dismissed, the Court gave her the benefit of the doubt and

ORDERED Plaintiff to file a motion and brief in support of her claims on or before July 16, 2009. The Court expressly warned Plaintiff that failure to file said motion and brief will result in the undersigned entering a Report and Recommendation recommending to the District Judge that this case be dismissed.

A review of the docket on August 14, 2009, indicates that Plaintiff has not filed a Motion for Summary Judgment or indeed any other filing with the Court.

RECOMMENDATION

For the above reasons, the undersigned respectfully **RECOMMENDS** that the plaintiff's Complaint (Docket No. 1) be **DISMISSED WITH PREJUDICE** for failure to prosecute and for failure to comply with the Court's Order of June 17, 2009.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable John Preston Bailey, Chief United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to counsel of record and to Plaintiff *pro se* by certified mail.

DATED: August 17, 2009.

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE